

CHILDREN'S HEALTH AND ENVIRONMENT COMMITTEE

DATE: April 21, 2005

CALLED TO ORDER: 6:03 p.m.

ADJOURNED: 7:22 p.m.

ATTENDANCE

ATTENDING MEMBERS

Angela Mansfield, Chair
Patrice Abduallah
Greg Bowes
Jim Bradford
Susie Day
Scott Keller
William Oliver
Steve Talley

ABSENT MEMBERS

AGENDA

PROPOSAL NO. 45, 2005 - amends the Code by establishing nonsmoking areas

CHILDREN'S HEALTH AND ENVIRONMENT COMMITTEE

The Children's Health and Environment Committee of the City-County Council met on Thursday, April 21, 2005. Chair Angela Mansfield called the meeting to order at 6:03 p.m. with the following members present: Patrice Abdullah, Greg Bowes, Jim Bradford, Susie Day, and Scott Keller. William Oliver and Steve Talley arrived shortly thereafter. Councillors Dane Mahern, Lincoln Plowman, and Joanne Sanders were also in attendance.

PROPOSAL NO. 45, 2005 - amends the Code by establishing nonsmoking areas

Chair Mansfield stated that this hearing is not a public forum like the previous four hearings. She said that a brief presentation on the Indiana Air Monitoring Study, which was commissioned by Indiana Tobacco Prevention and Cessation and was conducted in conjunction with Bloomington, Indiana's smokefree ordinance, will be presented this evening. Following the presentation, she will open the floor for questions by Councillors and discussion about possible amendments.

Mark Travers, researcher in the Division of Cancer Prevention and Population Sciences, Roswell Park Cancer Institute, said that he has spent the last few years examining indoor air quality in the hospitality industry and the impact of smokefree air laws. He said that he has performed air monitoring studies around the world using state-of-the-art equipment and has conducted the largest study ever conducted in this field. He said that he was asked by Indiana Tobacco Prevention and Cessation and the Indiana Academy of Family Physicians to lead a study for Indiana. The goals of the study were to 1) assess the difference in air quality between Indiana bars and restaurants that allow smoking and those that do not; 2) document the change in air quality after enacting a clean indoor air law in Bloomington, Indiana; and 3) at least eight venues in three Indiana cities (Bloomington, Indianapolis and Fort Wayne) were selected for air monitoring to provide a broad range of size, location and type of venue. Mr. Travers explained the process of measuring air quality and showed a TSI SidePak AM510 Personal Aerosol Monitor that is used to measure particles less than 2.5 microns in diameter, which can easily be inhaled into the lung. He said that in comparison, a human hair is 100 microns in diameter, and therefore, this machine has the capability to measure very fine particles.

[Clerk's Note: Councillor Oliver arrived at 6:05 p.m.]

Mr. Travers said that long-term repeated exposure to particulate air pollution, like that experienced by workers in the hospitality industry, is known to increase the risk of chronic respiratory disease and cardio respiratory mortality. Short-term exposure to

particulate air pollution, like that experienced by hospitality industry patrons, can aggravate existing cardiovascular and pulmonary disease and increase the number of persons in a population that become symptomatic, require medical attention, or die. The concentration of particles in the air that they measure also serves as a marker for the more than 4,000 chemicals emitted from burning cigarettes, over 250 which are known to be toxic or carcinogenic. He showed real-time plots of samplings taken in Bloomington before the clean indoor air law, and then again after the law passed (shown in Exhibit A). He said that levels were low outdoors between venues and particles were much higher in venues where smoking was allowed. He said that the only place where the air quality was not markedly improved was in a venue where smoking was observed as taking place and therefore not in compliance with the new law. He said that the average amount of air pollution dropped from 347 micrograms per cubic meter to 37 micrograms, which was an 89% improvement. If the one venue that was not compliant was taken out of the equation, there was actually a 95% improvement. The levels in the venues that were smokefree before the law was enacted remained the same. The Environmental Protection Agency (EPA) set 15 micrograms per cubic meter as the average annual level and 65 micrograms per cubic meter as the average daily level not to exceed in order to protect the public health. The average fine particle levels before the law in Bloomington passed greatly exceeded the EPA standards at 273 micrograms per cubic meter, but the post-law compliant numbers were very close to the standards. He said that these findings were compared to Indianapolis and Fort Wayne, and the highest levels were found in Indianapolis, where there is no smokefree legislation. Fort Wayne, which has some restrictions in smoking restaurants, had lower levels than Indianapolis. He provided a graph which showed the comparison of Indianapolis air quality against Bloomington's post-law air quality (shown in Exhibit A), with levels 14 times higher in Indianapolis. He said that he has been monitoring the air levels in this room while speaking, and for comparison sake, the air quality level in this room is 2 micrograms per cubic meter. He said that from this study, it is clear that Bloomington's law is effectively protecting the health of workers and patrons from the hazards of secondhand smoke, since indoor air pollution levels dropped over 90%. He said that a similar policy removing secondhand smoke from Indianapolis bars and restaurants would reduce worker and patron exposure to this toxin and translate into improved Hoosier health.

[Clerk's Note: Councillor Talley arrived at 6:11 p.m.]

Councillor Oliver asked if any sampling has been done in the homes of smokers and non-smokers. Mr. Travers said that this study did not reach that far, but there have been such studies done in the past. Councillor Oliver asked if he could receive some information regarding this type of study and the levels found in homes, and how this relates to medical visits for those who live in smoking homes versus those who live in non-smoking environments. Mr. Travers said that he does not have that type of data with him this evening, but can get it for Councillor Oliver. He said, however, that the levels found in bars and restaurants are much higher than those found in a home, simply because there is a much greater concentration of people smoking. He said that

with regards to hospitalization and medical visits, the Center for Disease Control (CDC) has recommendations out to avoid smoking places for those who have heart conditions or other existing respiratory conditions, whether it is in the home or in bars or restaurants, because of the risk to their health. Councillor Oliver said that he spoke to a health care provider who visits the home to see where exposure to this type of pollution comes from. They do not investigate bars and restaurants, but find the environment in the home to be a contributing factor. Mr. Travers said that it is true that exposure to secondhand smoke is a well-established health hazard to children with respiratory problems.

Chair Mansfield said that Councillor Abdullah has had a death in his family and needs to leave early and would like to make a few comments before he leaves. She added that Councillors Keller and Talley also have prior commitments and may need to leave early.

Councillor Abdullah thanked Mr. Travers for sharing the results of this study, and said that many of those findings further substantiate his suspicions that smoke does indeed kill. He said that he continues to support Proposal No. 45, 2005 without wavering. He said that as a Councillor, he is obligated to improve the quality of the City and sometimes it takes tough decisions in order to do that. He said that he believes the ordinance still lacks some teeth for him and should be stricter. He said that if the public realizes the Committee is doing this for their safety, there will actually be more business brought to some of these restaurants and bars. He said that the Committee should have the fortitude to stand up and make this decision. He said that he is going to pay his last respects this evening to an uncle who lost his life due to cancer, and he will do all he can to support this life-saving ordinance and encouraged his fellow Councillors to do the same.

[Clerk's Note: Councillor Abdullah left at 6:20 p.m.]

Councillor Bradford asked what time of the year the pre-law samples were taken. Mr. Travers said that the pre and post-law samples were taken a month apart. The pre-law samples were taken in December and the post-law samples in January, just after the law was enacted. Councillor Bradford said that it is his understanding that Ft. Wayne's ordinance is similar to the one introduced for Indianapolis, which pretty much bans smoking everywhere. He asked why the pollution levels did not drop like Bloomington's did. Chair Mansfield said that Ft. Wayne's proposal is actually much weaker, and smoking rooms are allowed in restaurants. Bars do not have smoking restrictions. Mr. Travers said that this is his understanding as well. Councillor Bradford asked why the study only examined bars and restaurants and did not include other places of employment, since these ordinances cover all workplaces, and bars and restaurants are just a small part of the entire ban. Councillor Bradford said that law offices, accounting companies, trucking companies, and taxis might have high levels since they would not have the air movers and smoke eaters in place that a restaurant might. Mr. Travers said that other workplaces typically have much lower levels, even without smoke eaters.

He said that they focused on places that would have the greatest impact as a result of the law. He said that many of the other workplaces Councillor Bradford mentioned are already smokefree. He added that some of these workplaces are not necessarily public spaces that experience a lot of foot traffic on a steady basis. He said that for this study, they chose venues where there were a large number of patrons. Councillor Bradford said it seems this ordinance goes after restaurants and bars more than other places of employment. Mr. Travers said that he is not really familiar with what the intent of this particular ordinance is and simply designed his study to provide statistics for Bloomington. He said that the same improvement would be seen in other workplaces that currently allow smoking.

Councillor Bradford asked if insurance premium costs and hospital visits dropped as a result of the clean indoor air act in Bloomington. He said that it has been testified that secondhand smoke is a large health problem, and it would seem this would be an aspect to be reviewed. Mr. Travers said that he cannot answer that question as his study is specific to air pollution. He said that it would, however, be an interesting study to undertake.

Councillor Bradford said that it was reported in *The Indianapolis Star* that Mr. Travers was paid \$5,500 for this study, and he asked if this pay included Mr. Travers attending the meeting this evening. Mr. Travers said that those were all costs associated with the study, and also includes public appearances to talk about the findings.

Councillor Bradford said that earlier in this hearing process, certain health risks were portrayed as the number two primary killer, yet the study reported in *The Indianapolis Star* indicated that these same weight-related risks rank number seven. He said that his concern is that studies are done, and then statistics change. Mr. Travers stated that this data will not change and has been both published and peer reviewed. Councillor Bradford said that he is sure that those who conducted the earlier studies that cited weight-related diseases as the number two killer thought their data was valid at the time, also. Mr. Travers said that he has not done any research in that area, so he cannot speak to those results, but can only assure the Committee that this data is extremely valid.

Councillor Keller said that the article to which Councillor Bradford is referring is a re-categorizing of the way health risks are defined. It is not a matter of being inaccurate in calculations, but a change in the way certain aspects are weighed. He said that the number one preventable health risk is still tobacco smoke, and this did not change in any way. He added that the Indiana Insurance Department does approve rates for insurance premiums and do calculate health down to township levels. He said that it is probably too soon to collect that data in Bloomington, since the ban just took place this year, but it would be easily measurable in the future.

Councillor Bowes stated that it was a very long process drafting Proposal No. 45, 2005, and both the Ft. Wayne and Bloomington ordinances were considered carefully during

this drafting. He said that the Ft. Wayne ordinance is not comprehensive, and in some venues, both the non-smoking and smoking areas still share the same air space. He said that this data shows specifically why it is important to have separate ventilation. He asked Mr. Travers if when he did the study he took note of separate sections in the same space and the air handling equipment in the space. Mr. Travers said that they did not record ventilation systems and the presence of smoke eating equipment in this particular study. He said that they have, however, looked at these issues in the past, and found that it was common that even when this equipment was in place, it was often not turned on or not maintained properly. He added that even if they are maintained and running, they are not effective. He said that the companies that make these machines claim that they remove 99% of fine particles, but the fine print shows that they only remove a very small percent of certain particles. He said that if someone is smoking near a patron, they will still be exposed to that person's smoke before the smoke reaches a smoke eater. Councillor Bowes asked if there are any studies that show how a non-smoking area is affected by a smoking area sharing the same room. Mr. Travers said that these studies have been done, and there is a great deal of variability, depending on size of the room and height of ceilings, separation between the sections, and ventilation systems in place. He said that in New York State, some waivers were issued for bars that installed separately enclosed, separately ventilated smoking rooms. He said that many of these rooms were found to be ineffective in eliminating the pollution from the smoking rooms from entering the non-smoking areas. He said that the law sounds good in theory, but doors are often left open, and in practice, they are not good at eliminating smoke exposure in a non-smoking area. Councillor Bowes asked if he can get a copy of these studies. Mr. Travers said that he would be happy to provide such.

Chair Mansfield thanked Mr. Travers for sharing with the Committee. She said that since the public forums, there have been many amendments discussed, and she would like to open up discussion among Councillors regarding possible amendments. She said that as a result of the forums, it is evident that some type of exemption needs to be established for the bars and taverns, with a focus on the "mom and pop" neighborhood taverns. She said that when she thinks of taverns, she normally thinks of alcohol, but most taverns have food and alcohol sales at an approximate 50/50 ratio. She said that most taverns have good lunch and dinner crowds where limited alcohol is sold, and then a late-night drinking crowd. She said that this makes it difficult in looking at a percentage of food sales to determine the definition of a "tavern." She said, therefore, that some are looking more at an age 21 cut-off instead in order to accommodate small "mom and pop" establishments. She added that she is personally willing to make an exception for certain private clubs that involve veterans, such as the VFW and the American Legion.

Councillor Bradford said that he probably has more experience on this Council when it comes to alcoholic beverage rules and regulations. He said that the 50/50 ratio for taverns is probably incorrect. He said that most restaurants run around 15% of sales in alcohol, and the rest of the taverns by law have to sell 20 to 25% in hot food,

sandwiches, coffee, soda, and milk. He said that many of these taverns and restaurants employ people under the age of 21. The law recently was changed in Indiana because of a shortage of people to work in the restaurant industry. The law allows servers, hostesses, band musicians, and entertainers to be ages 18 to 21. He said that he has approximately 30 locations in Broad Ripple that will opt to be over-21 establishments and eliminate their family rooms, because the family room business does not pay their bills. He said that this would leave only a few places in Broad Ripple that would cater to families and children, which would be his restaurant, Subway and McDonalds, and possibly Jimmy Johns. He said that the high-end establishments like Ruth Chris Steak House, Slippery Noodle, and St. Elmo's Steak House might also decide to be over 21, which would limit the exposure of children to this kind of history and culture in the City. He said that the current ordinance also prohibits smoking on any city or county-owned property, and therefore all the sidewalks in Broad Ripple will have to become over 21. He said that every restaurant in Circle Centre Mall would have to be smokefree because it is city-owned property. He said that he has concerns about this proposal hurting the hospitality industry in his district. He said that the City does not have a problem taking their cut of taxes that comes from the sale of cigarettes, and when the amount of people who smoke drops, the Council will have to raise taxes to make up for it.

Councillor Talley asked for clarification about 18 to 21-year-olds and asked if 18-year-olds can serve alcohol. Councillor Bradford said that exotic dancers, band members, and servers are allowed at the age of 18 in bars. He said that the ordinance as written would say that an 18-year-old could not work in a smoke-filled room. Chair Mansfield said that the ordinance does not say that at this time, and this is a possible amendment being considered. Councillor Bradford said that the Chamber of Commerce made recommendations for an 18-year-old limit, in order to correspond with the law, since that is the legal limit to smoke a cigarette and 18-year-olds are considered adults.

Councillor Keller said that Sec. 616-203 says that no smoking is allowed in an outdoor seating area for a restaurant, yet Sec. 616-206 provides for outdoor cafes that have no covering to be exempt. He asked for clarification of this. Councillor Bowes said that the intent was to disallow smoking in an outdoor seating area for a restaurant, but the exemption carves out some places without a roof to be exempt. He said that this is a valid question, and possibly this section needs to be re-written to indicate that those seating areas without any restriction to the sky can allow smoking. He said that the interesting question would be that a bar might be designated smoking, but an outdoor seating area might be designated non-smoking as per this ordinance, because of a roof. He said that they need to make it clear that the outdoor seating area follows the indoor regulations, and this would be an easy question to address by wording the proposal differently. Councillor Keller said that those outdoor cafes would then be exempted which do not have a roof, such as The Chatterbox. Councillor Bradford said that The Chatterbox's seating area is on the sidewalk and therefore public property. Councillor Keller said that the reference to public property defines it as "in buildings" and therefore, he does not think sidewalks apply. Councillor Bowes said that the intent was that a

government agency be smokefree. He said that the leasing language probably needs to be clarified, so that it is clear that this language applies to the entity using the facility.

Councillor Bowes said that with regards to the age-based criteria, he was thinking age 21 because it was testified that smoking goes with drinking, and 21 is the legal drinking age. He said that there have been questions raised about 18-year-olds working in these establishments, and he would not want anyone to lose their job over something this Committee does. He said that those currently working at age 18 in such an establishment should be protected. He said that this 21-year-old requirement could possibly be phased in over a three-year period, so that no-one who currently has a job will lose it. He said that his personal preference is that smoking should not be allowed anywhere where it will affect someone else and contribute to the air pollution. He is trying to carve out an exemption so that smokers have an option to smoke in some establishments, but that exemption should come at a price. The establishment will have to make a choice, and should not be allowed to cater to both families and smokers. Otherwise, there is no reason for any regulation at all. He said that the establishments in Broad Ripple will have to make this choice like any other restaurant or bar in the County. He said that restaurants are setting up family rooms all over the County, not just in Broad Ripple, and they will also need to make a choice about which customers they prefer to cater to, in order to protect children. Before deciding what age limit or percentage of sales to use, maybe some research should be done as to how many would actually be affected by the different scenarios. He said that his definition of a bar or tavern is that the primary sales would be in alcohol, not food. He said that it has been difficult to make that distinction between a bar and restaurant, because every place where an alcohol permit is granted must have the ability to sell food. He said that the easiest way would not be to exempt bars or restaurants at all.

[Clerk's Note: Councillor Keller left at 6:58 p.m.]

Councillor Oliver asked with regards to enforcement, what happens when an owner asks a patron not to smoke and they choose not to? Councillor Bowes stated that an owner has many regulations to follow to run their establishment in an orderly way, and asking the patron not to smoke is the owner's only duty. He said that this is where the owner's obligation ends. He said that the concern is about the owner who jokingly asks a patron not to smoke while flaunting the law.

Councillor Oliver said that he would like to see a study that shows the air quality in an establishment that has both smoking and non-smoking areas. Councillor Bowes said that Mr. Travers agreed to make these studies available.

[Clerk's Note: Councillor Talley left at 7:04 p.m.]

Councillor Bradford said that State law already has a family establishment requirement, and there has to be limited separation. A person should not have to walk through the smoking section to get to the non-smoking section. He said that the separation allows

approximately 3 feet on each side of the separation. In order to qualify, an establishment must do at least \$200,000 in food sales or 60% of the business in food sales. He said that the State of Indiana has already defined a family restaurant. He added that Marion County is only one out of 92 counties. With approximately 10,000 liquor permits in the State of Indiana, 10% of those permits are represented here in Marion County. He said that this decision will affect Broad Ripple very directly. Unlike downtown or Massachusetts Avenue, Broad Ripple does not get the infrastructure that some of these other areas do because of grant qualifications, and they have had to pay their own way. Now after paying their own way, these businesses are going to be told how to run their business. He asked for clarification on Union Station and Circle Centre Mall. Even though these are city-owned properties, the entities leasing the property would not necessarily have to be smokefree if they are not a government agency. Chair Mansfield said that this is correct, and this government-owned restriction was intended for government business entities. Councillor Bowes said that the language surrounding government-owned property and lessees needs to be cleared up to make it less confusing.

Councillor Bradford asked about the Holiday Inn at Union Station and their awnings overhanging their outdoor seating area. He asked if he was correct in understanding that this awning area would have to be smokefree, but when they bring out large parasols and umbrellas for their tables, these would not have to be. Councillor Bowes said that some common sense would need to be used in these instances and the ordinance cannot be written so particularly to legislate all the different scenarios that might arise. He said that the general spirit of the ordinance is to protect the public health. He said that these establishments would have to make a decision to be smoking or non-smoking and comply with the intent of the law.

Chair Mansfield stated that the next Committee hearing will be on May 5, 2005 at 6:00 p.m. where some amendments are expected to be offered and considered at that time. There being no further business, and upon motion duly made, the meeting was adjourned at 7:22 p.m.

Respectfully Submitted,

Angela Mansfield, Chair

AM/ag